REMARKS

In the above referenced Office Action, Claims 1, 4,-9, 13, 14-22 , 24, 26, 27 and 30 were rejected under 35 USC 103(a). Applicants respectfully traverse this rejection.

Claim 1 includes, among other things "a processor arrangement . . . configured to receive data indicative of an implanted medical device state from the implanted medical device and automatically select the subset of commands as a function of the device state.

Snell does not teach nor suggest this concept. The Examiner relies on Rozak et al., which apparently allows a user in a Windows based environment to assign a voice tag to select text in a clipboard. This process also allows the user to define which software, running in the Windows environment, the copied text is useable in.

Neither reference teaches using a first independent device to interrogate a second independent device; determining a state of the second device and selecting a subset of voice commands useable with the first device to program the second device. More specifically, neither reference alone or in combination teaches a medical device programmer that interrogates an implanted medical device, determines the state of that implanted medical device and selects a subset of voice commands operable with the programmer to facilitate the programming a medical device.

The Examiner is again relying upon generalized voice recognition teachings and minimizing the claimed invention as a whole. The claims are directed to implanted medical devices and programmers therefore. Having a user define a clipboard selection as useable in Word or Exel does not teach nor suggest to one of ordinary skill in the art to modify the Snell device to interrogate an IMD, determine the IMD's current state, and automatically select appropriate voice prompts.

Applicants respectfully assert that the claims are in condition for allowance and that the rejections are improper and must be withdrawn. The remaining claims are allowable for the same or similar reasons.

In Applicant's previous response, controlling case law was cited indicating that the selective picking and choosing of elements from references to forge a rejection

without support or motivation was improper based upon hindsight. The Examiner has improperly and incorrectly dismissed the controlling case law as dealing with "unexpected results."

While the final paragraph of the holding upholds the lower court's dismissal of evidence of secondary considerations, this is the only portion dealing with that issue. The vast majority of the opinion is squarely on point and indicates that the claims must be considered as a whole and in context and that an Examiner (or court) may not arbitrarily pick and choose elements from references solely for the sake of making a rejection. That is hindsight reasoning and is wholly improper.

Despite the Examiner's statement, "hindsight" is not something that may be "overcome" – either a rejection is proper or it is not; hindsight never forms a proper or permissible basis for a rejection.

The Examiner's discussion of "unexpected results" is irrelevant. When a primae facie case of obviousness is presented by an Examiner, such a rejection may be overcome by the Applicant through showing unexpected results.

In the present case, the Examiner has failed to establish a primae facie case of obviousness. The asserted rejections are improper and must be withdrawn. Applicant has not asserted nor argued "unexpected results" and despite the Examiner's conclusory statements, the controlling case law cited is not limited to nor particularly focused on "the issues of old regarding 103, i.e., that the value of combining various existing features or principles in a new way lies in he achievement of unexpected results." Applicants respectfully assert that this is not a correct statement of the law or the specific case cited. Should the Examiner choose to maintain such an interpretation, Applicants requests specific reference to the court's holding that supports the Examiner's statement. The issue of unexpected results is currently irrelevant in the instant application.

As the claims are in condition for allowance, notice of the same is respectfully requested. Should any issues remain outstanding, the Examiner is respectfully urged to telephone the undersigned to expedite prosecution.

CONCLUSION

Applicants respectfully assert that the claims are in condition for allowance and requests notice of the same. Should any issues remain outstanding, the Examiner is respectfully urged to telephone the undersigned to expedite prosecution.

Respectfully submitted,

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